IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.12.2007

CORAM:

THE HONOURABLE MR.JUSTICE M.VENUGOPAL

C.R.P.(NPD).No.229 of 2004 and
C.M.P.No.1974 of 2004

M/s.Vividh Hi-Fab
rep. By its Partner
987/10/C, C.I.D.C.,
Makarpura, Vadodara, Gujarat ... Petitioner

Vs.

M/s.Gen Energy Systems-India Limited
443, Anna Salai, Chennai-600 018. ... Respondent

Prayer: Petition filed under Section 115 of the Code of Civil Procedure, against the judgment and decree dated 11.11.2003 made in E.A.No.4714 of 2003 in E.P.No.757 of 2003 in O.S.No.582 of 2002 on the file of the IX Asst. City Civil Court, Chennai.

For Petitioner : Mr.G.Thangapandian
For Respondent : Mr.G.Sundaram

O R D E R

The civil revision petitioner/Decree Holder is the plaintiff in the suit O.S.No.582 of 2002 on the file of Civil Judge (Sr.Div.), Vadodara. The respondent is the defendant/judgment debtor in the suit who has filed E.A.No.4714 of 2003 in E.P.No.757 of 2003 in O.S.No.582 of 2002 on the file of learned IX Assistant Judge, City Civil Court, Chennai.

2.The civil revision petitioner/Decree Holder/ respondent has obtained a decree on 31.12.2002 on the file of 3rd Jt. Civil Judge (Sr.Div.), Vadodara against the Judgment Debtor/respondent who filed E.A.No.4714 of 2003. The decree in O.S.No.582 of 2002 was transmitted to City Civil Court, Chennai for its execution.

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3.The respondent/Judgment Debtor has preferred E.A.No.4714 of 2003 in E.P.No.757 of 2003 in O.S.No.582 of 2002 on the file of learned IX Assistant Judge, City Civil Court, Chennai under Section 47 and 151 of Civil Procedure Code praying to declare that the decree passed on 31.12.2002 in Summary Special Suit No.582 of 2002 issued by the Jt. Civil Judge, Vadodara is null and void and is incapable execution.

4.In the counter filed by the civil revision petitioner/respondent/plaintiff/decree holder, it is inter-alia mentioned that the respondent/applicant/defendant /Judgment Debtor has not taken any steps to set aside the Decree passed on 31.12.2002 by the trial Court and that the Decree has been passed by a competent Court and that it is a valid and executable decree and that the issue of jurisdiction and question of fact regarding the terms of contract cannot be urged before the Executing Court and that the application is liable to be dismissed.

5.The learned IX Assistant Judge, City Civil Court, Chennai in the order dated 11.11.2003 passed in E.A.No.4714 of 2003 in E.P.No.757 of 2003 in O.S.No.582 of 2002 has held that *"a Court at Vadodara has no jurisdiction to try this case and hence, the decree passed without jurisdiction is nullity and void and unexecutable in the Executing Court"* and resultantly allowed the application in dismissing the execution petition.

6.The learned counsel for the revision petitioner/ respondent/ plaintiff/Decree Holder urges that the order dated 11.11.2003 passed by the learned IX Assistant Judge in E.A.No.4714 of 2003 in E.P.No.757 of 2003 in O.S.No.582 of 2002 (transmitted decree from Vadodara) is illegal in view of the fact that the Executing Court cannot go behind the tenor of the decree and that the decree will become a nullity only if a decree was passed by a Court which lacks inherent jurisdiction and that the Vadodara Civil Court has inherent jurisdiction by means of pecuniary and cause of action.

7.It is further contended on behalf of the civil revision petitioner/DecreeHolder/plaintiff that the respondent/applicant/ Judgment Debtor has failed to appear before the concerned Court when Court notice was served on it and having failed to raise his objections in the suit proceedings, it cannot take a plea before the Executing Court.

8.On behalf of the civil revision petitioner/Decree Holder/plaintiff reliance is placed on the decision *AIR 2004 SC 4377 (Balavant N.Viswamitra V. Yadav Sadashiv Mule)* wherein it is observed as follows:

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"(A) Civil P.C. (5 of 1908), S.47, O.21, R.58 - Inexecutable decrees - Irregular or wrong decrees or orders - Are not necessarily null and void - Suit for possession - Proceedings initiated against heirs of deceased tenant - Notice terminating tenancy sent to heirs and legal representatives of deceased by registered post which had come back - Notice under certificate of posting did not come back - Notice was, affixed on suit premises - From the record, it is also clear that defendants were aware of proceedings and they had engaged counsel who was present when plaintiff was examined - Thereafter, with permission of Court, counsel withdrew his appearance because he had no instructions in matter from defendants and a decree was passed - Decree having been passed by competent Court having jurisdiction over subject matter - Is not null and void - Cannot be objected in execution proceedings."

9.He further cited *(2004) 1 SCC 287 (Rafique Bibi V. Sayed Waliuddin)* wherein it is held as follows:

"B.Civil Procedure Code, 1908 - Ss. 47 and 33 - Decree - "Illegal decree" and "Null/Void decree" - Executability of - Difference in - Powers of executing court in this regard - Remedy in case of "nullity" - Held, if "nullity" of decree, for want of jurisdiction, is patent on face of the decree then executing court may take cognizance of the nullity - Else normal rule that executing court cannot go behind the decree prevails - Remedy in case of "illegality" - held, is to have it set aside in a duly constituted legal proceedings or by a superior court, failing which command of decree must be obeyed - Decree passed by a court of competent jurisdiction cannot be denuded of its efficacy by any collateral attack or in incidental proceedings - Rent Control and Eviction - Execution of eviction decree - Plea of nullity/illegality - Change in law during pendency of suit - Effect."

10.The learned counsel for the civil revision petitioner/Decree Holder/plaintiff pressed into service the decision *AIR 1999 SC 246 (Bhawarlal Bhandari V. M/s.Universal H.M.L. Enterprises)* wherein it is held thus:

"(A) Arbitration Act (10 of 1940), S.14- Award - Filing of - Award decree not shown to be passed without jurisdiction - Respondent judgment-debtor not filing

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objections - Award decree becoming final - Plea by judgment-debtor in execution proceedings to ignore the decree as being nullity - Not tenable."

11.The civil revision petitioner/Decree Holder/plaintiff earlier preferred C.R.P.(NPD).229 of 2004 before this Court and in C.M.P.No.1974 of 2004, this Court has passed orders on 12.02.2004 directing the respondent/Judgment Debtor to deposit a sum of Rs.3,00,000/- to the credit of E.P.No.757 of 2003 on the file of IX Assistant City Civil Court, Chennai.

12.According to the learned counsel for the respondent/Judgment Debtor/applicant, the Court at Vadodara has no jurisdiction to pass a decree in the present case on account of conditions specified in the purchase order dated 03.03.1999 made between the parties which fixed the competent Court within the limits of Chennai and that the Executing Court can hear objections that the decree is a nullity and this can be decided under Section 47 of the Civil Procedure Code.

13.According to the learned counsel for the respondent/Judgment Debtor/defendant, the admitted claim is only Rs.30,000/- and that in the application to set aside the decree dated 31.12.2002 passed in O.S.No.582 of 2002 by the 3rd Joint Civil Judge (Sr.Div), Vadodara, the orders are awaited.

14.This Court has noticed the respective contentions of the parties.

15.In general, the Executing Court should not interfere with the decree and execute the decree as its stands in the considered opinion of this Court. As a matter of fact, the Executing Court can take into consideration, the subsequent events as per decision *(1999) 9 SCC page 198, 199.* Moreover, no Executing Court can go beyond the decree except where the decree is void *ab initio* or without jurisdiction.

16.In *AIR 1976 KNT 56* it is observed that "*the Executing Court cannot challenge jurisdiction of Court which passed the decree*". Admittedly, the respondent/Judgment Debtor/defendant has filed an application to set aside the decree at Vadodara before the concerned Court and that orders are awaited thereto. Before passing of the decree on 31.12.2002 in O.S.No.582 of 2002 on the file of 3rd Joint Civil Judge, (Sr.Div), Vadodara, it appears that the respondent/Judgment Debtor/applicant has not raised the issue of jurisdiction or lack of jurisdiction. Only after passing of the decree dated 31.12.2002 in O.S.No.582 of 2002 the application to set aside the decree has been filed by the respondent/Judgment Debtor/applicant. Inasmuch as the the orders are awaited from the

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concerned competent Court at Vadodara in the application filed by the respondent/Judgment Debtor/applicant, taking note of the events and without expressing any opinion on the merits of the case, this Court is of the considered view that to promote substantial cause of justice and to prevent aberration of justice, the Executing Court can wait for four months as to the verdict in the said application by the concerned Court at Vadodara and till such time, this Court opines no prejudice will be caused to either parties and in that view of the matter, the civil revision petition is allowed.

17.In fine, the Civil Revision Petition is allowed. The order passed by the learned IX Assistant City Civil Court, Chennai dated 11.11.2003 made in E.A.No.4714 of 2003 in E.P.No.757 of 2003 in O.S.No.582 of 2002 is set aside. The Executing Court is directed to wait for four months as to the verdict in the application to set aside the exparte decree pending before the concerned competent Court at Vadodara and till such time, this Court opines no prejudice will be caused to either parties and thereafter, the Executing Court shall proceed with the matter pending before it in the manner known to law.

18.Considering the facts and circumstances of the case, the parties are directed to bear their respective costs. Consequently, connected miscellaneous petition is closed.

Sgl

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

To

1. The IX Asst. City Civil Court,
Chennai.

2. The 3rd Joint Civil Judge (Sr.Div.)
Vadodara, Gujarat

3. The Section Officer,
VR. Section, High Court, Madras.
1 cc to Mr.G.Sundaram, Advocate, SR.76141
mrd (co)

dv/5.1.

Order in
C.R.P.(NPD).No.229 of 2004

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